

FARON R. SLYE)
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 Plaintiff,) Civil Action No.5:04CV00046
)
 v.) **MEMORANDUM OPINION**
)
 JO ANNE B. BARNHART,)
 Commissioner of Social Security) By: Hon. Glen E. Conrad
) United States District Judge
)
 Defendant.)

The plaintiff, Faron R. Slye, was born on June 11, 1953. He was graduated from high school and completed one year of college. Mr. Slye has past work experience as a military policeman in the United States Army and a deputy sheriff. On June 28, 2003, Mr. Slye filed an application for disability insurance benefits. He alleged that he became disabled for all forms of substantial gainful employment on August 15, 2001 due to hypertension, heart attack, a pinched nerve in his left shoulder, and sinus problems. Mr. Slye now maintains that he remains disabled to the present time. The record reflects that Mr. Slye meets the insured status requirements of the Act through September 2005. See generally, 42 U.S.C. §§ 414 and 423.

Mr. Slye's claims were denied upon initial consideration and reconsideration. He then requested and received a de novo hearing and review before an Administrative Law Judge. In an opinion dated February 5, 2004, the Law Judge also determined that Mr. Slye is not disabled.

The Law Judge found that Mr. Slye suffers from coronary artery disease, status post myocardial infarction, cervical radiculopathy, depression, and panic disorder/post traumatic stress disorder.¹

The Law Judge further determined that while Mr. Slye's impairments, in combination, are severe within the meaning of the regulations, the impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulations No. 4. See 20 C.F.R. § 404.1520(d).

Based on plaintiff's impairments, the Law Judge found that Mr. Slye is disabled for all past relevant work. However, the Law Judge determined that he retains the residual functional capacity to perform a significant range of light to sedentary work, based on the following restrictions:

[L]imited ability to push and pull with the dominant upper extremity, occasional overhead reaching and fine manipulation with the dominant hand, and a moderate limitation in the ability to concentrate, maintain attention for extended periods and keep up a pace, to respond appropriately to changes in the work setting, and to set realistic goals or make plans independently of others, as a function of pain and emotional problems.

(TR 16-17). Given such a residual functional capacity, and after consideration of plaintiff's age, education, past work experience, as well as the testimony of a vocational expert, the Law Judge determined that the plaintiff can work as a machine tender, file clerk, finish machine operator, or inspector. Accordingly, the Law Judge ultimately concluded that Mr. Slye is not disabled, and that he is not entitled to benefits under the Act. See 20 C.F.R. § 404.1520(f). The Law Judge's opinion was adopted as the final decision of the Commissioner by the Social Security Administration's Appeals Council. Having exhausted all available administrative remedies, Mr. Slye now appeals to this court.

While plaintiff may be disabled for certain forms of employment, the crucial factual determination is whether the plaintiff is disabled for all forms of substantial gainful employment.

¹ Mr. Slye also suffers from hypertension, however the Law Judge found that impairment to be non-severe.

See 42 U.S.C. § 423(d)(2). There are four elements of proof which must be considered in making such an analysis. These elements are summarized as follows: (1) objective medical facts and clinical findings; (2) the opinions and conclusions of treating physicians; (3) subjective evidence of physical manifestations of impairments, as described through a claimant's testimony; and (4) the claimant's education, vocational history, residual skills and age. Vitek v. Finch, 438 F.2d 1157, 1159-60 (4th Cir. 1971); Underwood v. Ribicoff, 298 F.2d 850, 851 (4th Cir. 1962).

The court's review is limited to determining whether there is substantial evidence to support the Commissioner's conclusion that plaintiff failed to meet the conditions for entitlement established by and pursuant to the Act. If such substantial evidence exists, the final decision of the Commissioner must be affirmed. Laws v. Celebrezze, 368 F.2d 640 (4th Cir. 1966). Stated briefly, substantial evidence has been defined as such relevant evidence, considering the record as a whole, as might be found adequate to support a conclusion by a reasonable mind.

Richardson v. Perales, 402 U.S. 389, 401 (1971).

After a review of the record in this case, the court is constrained to conclude that the Commissioner's final decision is supported by substantial evidence. The Law Judge sufficiently considered all of Mr. Slye's alleged symptoms and the extent to which the impairments limit his ability to work. Likewise, the Law Judge carefully considered Mr. Slye's subjective complaints and the extent to which they are supported by and consistent with the objective medical evidence. While Mr. Slye suffers from some physical and mental limitations, the court finds that the Law Judge properly relied upon the vocational expert's testimony in concluding that plaintiff retains sufficient functional capacity for several occupational roles. The record supports the Law Judge's determination that while plaintiff's ability to work is limited by his physical and mental impairments, he is not totally disabled within the meaning of the Act. Therefore, the court finds

substantial evidence to support the Commissioner's determination that Mr. Slye retains the residual functional capacity to work as a machine tender, file clerk, finish machine operator, or an inspector.

Mr. Slye suffered a heart attack on August 15, 2001. (TR 94). After his initial treatment at Rockingham Memorial Hospital, Mr. Slye was transferred to the University of Virginia Health System's Heart Center on August 17, 2001 for the placement of three stents. (TR 122). Mr. Slye was discharged home on August 18, 2001 without evidence of complications. (TR 125). Mr. Slye returned to the UVA Heart Center on August 29, 2001, again complaining of chest pain. (TR 155). Mr. Slye was released the following day after doctors determined that his stents were all patent and that he was pain-free. (TR 156).

Mr. Slye then returned to Dr. James Feeley, his treating physician. Mr. Slye reported problems with fluttering in his chest and extra heartbeats in September and November 2001. (TR 194). However, Dr. Feeley indicated that Mr. Slye was doing very well on his medication, Plavix. (TR 196). Mr. Slye again returned to the UVA Heart Center with chest pains on February 27, 2002, but a second heart attack was ruled out. (TR 210). At a follow-up visit with Dr. Habib Samady at UVA on April 26, 2002, Mr. Slye indicated that he continues to experience episodes of non-cardiac chest pain, however, Dr. Samady stated that Mr. Slye is doing "reasonably well" from a cardiac standpoint. (TR 187). In fact, all tests performed in 2002 show results within normal limits. (TR 238). Mr. Slye was examined on February 23, 2003 by Dr. F. A. Irani, who saw plaintiff on behalf of the Virginia Department of Rehabilitative Services. Dr. Irani indicated that Mr. Slye's continued chest pains, which are particularly associated with exertion, could be relieved with relaxation or nitroglycerin. (TR 244).

Mr. Slye began receiving treatment for left shoulder pain in December 2001 at the

Martinsburg VA Medical Center where X-rays taken of Mr. Slye's left shoulder indicated no sign of fracture or other anomaly. (TR 225). Further tests of the left shoulder at the Harrisonburg VA Medical Center also demonstrated no evidence of abnormalities, though there is a notation of a moderate weakness of grip strength. (TR 217, 218). In his medical consultant report, Dr. Irani stated his impression that the pain in Mr. Slye's left shoulder could be due to degenerative arthritis. (TR 246). Mr. Slye again received treatment for his left shoulder pain at the Martinsburg VA Medical Center in 2002 and 2003. Doctors there eventually determined that Mr. Slye's continued pain could be due to cervical radiculopathy. (TR 259). The Disability Determination Services range of motion form completed on February 25, 2003 indicates that the range of motion in plaintiff's left shoulder is slightly below normal limits. (TR 248). The Neurological Evaluation Supplement, also completed on February 25, 2003, shows some evidence of reduced strength in Mr. Slye's upper left extremity. (TR 247).

Dr. Feeley noted that Mr. Slye has panic/anxiety attacks and possible post traumatic stress disorder in February and September of 2001. (TR 194, 197). Dr. Feeley prescribed Xanax for Mr. Slye in late 2001. (TR 195). Depression and trauma screens performed at the Martinsburg VA facility in December 2001, however, were negative. (TR 226). In early 2003, Mr. Slye's depression and anxiety symptoms began to increase. Mr. Slye has anxiety attacks in which he does not want to leave his house. (TR 254). At the administrative hearing, Mr. Slye testified that he has difficulty sleeping and that he has trouble handling pressure, being around people and concentrating. (TR 288, 289). In the Medical Source Statement of Ability to Do Work-Related Activities (Mental), clinical psychologist Kenneth Rosner noted that Mr. Slye is very anxious and avoidant and that his panic attacks are keeping him at home. (TR 274). Nevertheless, Dr. Rosner found that Mr. Slye's abilities to respond to supervision, co-workers

and work pressures in a work setting are either good or fair. (TR 273).

Dr. James Ryan testified at the administrative hearing as a vocational expert. The Law Judge asked Dr. Ryan whether there are any jobs that could be performed by an individual with the following limitations:

[C]onsider an individual ranging from 48 to 49 and one 50 years old, who has a high school education and one year of college, with past work experience as a deputy sheriff and military police, who can lift and carry objects weighing up to 10 pounds frequently, and 20 pounds occasionally; with limitations in upper dominant extremity with respect to pushing or pulling and occasional overhead reaching and occasional manipulative changes such as fingering with dominant extremity (fine manipulation), with a moderate limitation in the ability to concentrate, maintain attention for extended periods and keep up a pace, as a function of pain, and emotional problems which result in moderate restriction of activities of daily living, moderate difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence, or pace, and one or two repeated episodes of decompensation, each of extended duration, as a result of moderate limitations in maintaining attention, concentration for extended periods, responding appropriately to changes in the work setting, and setting realistic goals or mak[ing] plans independently of others.

(TR19). In response to this hypothetical, Dr. Ryan testified that an individual with such limitations could perform jobs as a machine tender, file clerk, finish machine operator, or inspector, all of which exist in significant number in the national and regional economies. (TR 295-96). When confronted by plaintiff's counsel with Dr. Rosner's report, Dr. Ryan maintained that an individual with such limitations would be able to perform rote, repetitious jobs, even if he had to stay home up to two days a month to avoid panic attacks. (TR 19). If full credibility was given to Mr. Slye's testimony, however, and if it was supported by substantial medical evidence, the vocational expert testified that there would be no jobs the plaintiff could perform. (TR 19).

In deciding that Mr. Slye is not totally disabled, the Law Judge did not consider the plaintiff to be fully credible as to his functional capacity and the severity of his symptoms. (TR 19). The Law Judge concluded that Mr. Slye's expressed limitations were not supported by the objective medical evidence, as summarized above, or by Mr. Slye's own statements regarding his

daily activities. (TR 19). In his daily living questionnaire, Mr. Slye reported that he visits his parents who live twenty miles away or his daughter and granddaughter who live nearby several times per week, takes walks, and drives to the grocery store and appointments. (TR 71-75). At the administrative hearing, Mr. Slye testified that he has no problems walking, standing or sitting. (TR 286-87). The Law Judge properly determined that Mr. Slye's activities are inconsistent with his allegations of disabling limitations. (TR 17).

Based on this review of the record, the court concludes that the Commissioner's final decision is supported by substantial evidence. Although Mr. Slye continues to have chest pains subsequent to his heart attack in 2001, his pain appears to be controlled with relaxation or medications. His doctors have indicated that Mr. Slye has recovered from the heart attack, and his tests since that time have been within normal limits. Mr. Slye also continues to have pain in his left shoulder, and his range of motion has been somewhat affected. The Residual Physical Functional Capacity Assessment did take Mr. Slye's shoulder pain into account and indicated that he should lift no more than ten pounds frequently with occasional lifting of up to twenty pounds. (TR 237). That assessment was incorporated into the Law Judge's determination of Mr. Slye's residual functional capacity. (TR 20). The Law Judge also indicated that Mr. Slye has only a limited ability to push and pull with the dominant upper extremity, that is, his left shoulder. (TR 16). Mr. Slye's mental impairments are moderate, and the clinical psychologist who assessed his condition did not suggest that plaintiff is prevented from performing all forms of work activity. Furthermore, his limitations were properly presented to the vocational expert in the form of a hypothetical question during the administrative hearing.

The Law Judge's opinion, which was adopted by the Commissioner, demonstrates a thorough review of plaintiff's medical record, plaintiff's subjective complaints of pain, anxiety

and post traumatic stress disorder, and the extent to which such complaints are consistent with the objective medical evidence. The occupational limitations imposed by the Law Judge are consistent with the objective evidence on record and the plaintiff's own testimony. The record supports the Commissioner's determination that plaintiff is able to perform certain sedentary to light work roles, which exist in significant number in the national and regional economies.

Having found substantial evidence to support the Commissioner's determination that plaintiff is not disabled, the court concludes that the Commissioner's final decision must be affirmed. In affirming the Commissioner's decision, the court does not suggest that the plaintiff is totally free of symptoms relating to his coronary artery disease, status post myocardial infarction, cervical radiculopathy, depression, panic disorder, and post traumatic stress disorder. However, there is substantial evidence to support the Law Judge's opinion that the plaintiff can work as a machine tender, file clerk, finish machine operator or inspector. It must be recognized that the inability to work without any subjective complaints does not of itself render a claimant totally disabled. Craig v. Chater, 76 F.3d 585 (4th Cir. 1996). It appears to the court that the Administrative Law Judge gave full consideration to all the subjective factors in adjudicating plaintiff's claim for benefits. It follows that all facets of the Commissioner's final decision are supported by substantial evidence.

As a general rule, resolution of conflicts in the evidence is a matter within the province of the Commissioner, even if the court might resolve the conflicts differently. Richardson v. Perales, *supra*; Oppenheim v. Finch, 495 F.2d 396 (4th Cir. 1974). For the reasons stated, the court finds the Commissioner's resolution of the pertinent conflicts in the record in this case to be supported by substantial evidence. Accordingly, the final decision of the Commissioner must be affirmed. Laws v. Celebrezze, *supra*.

The clerk is directed to send certified copies of this opinion to all counsel of record.

DATED: This 29th day of September, 2004.

/S/ GLEN E. CONRAD
UNITED STATES DISTRICT JUDGE

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